

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

In the matter of:	)	
	)	
<b>CITY OF BARSTOW</b>	)	<b>Order No. R6V-2010-PROPOSED</b>
<b>Waste Water Treatment Plant</b>	)	<b>Settlement Agreement and Stipulation for</b>
<b>WDID No. 6B360101001</b>	)	<b>Administrative Civil Liability</b>
	)	

**Section I: Introduction**

This Settlement Agreement and Stipulation for Order (“Stipulation”) and Administrative Civil Liability Order (the “Order”) are issued in reference to an Administrative Civil Liability (“ACL”) Investigation Letter, and Notice of Violation (“NOV”) of Waste Discharge Requirements (“WDRs”) and California Water Code Section 13267, both dated June 16, 2009, and relating to the City of Barstow Wastewater Treatment Plant (“WWTP”), Barstow, San Bernardino County, WDID No. 6B360101001. The parties to this proceeding are the Lahontan Regional Water Quality Control Board (“Lahontan Water Board”), through its Prosecution Team, and the City of Barstow (the “City”, or “Discharger”) (collectively the “Parties”).

**Section II: Recitals**

1. The Barstow WWTP was built in 1968 as a primary treatment facility. The plant was upgraded to an activated sludge plant in 1973 with several major system upgrades, including headworks equipment, grit system, and new primary sludge pumps. The WWTP is located approximately one mile southeast of the City business district.
2. In February 1994, the Regional Water Board issued Waste Discharge Requirements (“WDR”) Order No. 6-94-26 (and MRP No. 94-26). WDR Order No. 6-94-26 is the current operable permit for the City WWTP (WDID No. 6B360101001).
3. Since approximately 1995, the City has retained contract operators to operate the WWTP. From approximately 1995 to 2003, the City retained ECO Resources, Inc. In approximately August 2003, AOS Operating Company (“AOS”) became the contract operator, and in February 2004, AOS formalized this arrangement and entered into a multi-year contract with the City. More recently, in 2007, AOS was acquired by United Water. United Water is the current contract operator of the WWTP.
4. In its June 16, 2009 NOV, the Lahontan Water Board alleged that the City violated WDR Order No. 6-94-26 and California Water Code Section 13267 for failing to

collect, store and analyze samples in accordance with an approved Sampling and Analysis Plan ("SAP"). A copy of the NOV is attached to this Stipulation as Exhibit A.

5. In its June 16, 2009 ACL Investigation Letter, the Lahontan Water Board Prosecution Team identified alleged violations of the General Provisions of WDR Order No. 6-94-26 and the associated monitoring and reporting program under MRP No. 94-26, for failure to establish chain of custody procedures and failure to collect, store and analyze samples in accordance with an approved SAP, and, for furnishing self-monitoring reports with duplicated monitoring and reporting information. A copy of the ACL Investigation Letter is attached to this Stipulation as Exhibit B.

6. On July 31, 2009, the City submitted to the Lahontan Water Board a SAP, which included chain of custody procedures and other elements to comply with WDR Order No. 6-94-26 and to address the issues raised in the NOV.

7. During this period, and up to and including October 2009, the City, through its contract operator United Water, undertook a complete and rigorous historical and current compliance review of the Barstow WWTP, which findings and conclusions were subsequently reported to the Lahontan Water Board Prosecution Team as part of settlement discussions.

8. The Parties engaged in the above process, including face-to-face meetings, as part of, and consistent with, the confidential pre-enforcement settlement process set forth in the ACL Investigation Letter. That process and those discussions resulted in the Parties reaching agreement as set forth herein.

9. The Parties agree to resolve by consent and without resort to contested administrative proceedings alleged violations of the California Water Code ("CWC") and WDR Order No. 6-94-26, in the amount of \$143,900 in administrative civil liability penalties. The Discharger shall pay \$117,800, made payable to the State Water Resources Control Board ("State Water Board") Pollution Cleanup and Abatement Account, no later than thirty (30) days following the Lahontan Water Board executing this Order. The remaining \$26,100 in administrative civil liability penalties shall be suspended pending the completion of the City's Enhanced Compliance Action ("ECA") described herein.

10. The ECA shall consist of installation of a Water Information Management System ("WIMS") at the WWTP. More specifically, the City, through United Water, will install the WIMS for its operation of the Barstow WWTP. WIMS software will, among other things, generate regulatory reports, and will help optimize operations by providing data and trends for troubleshooting and optimization.

11. WIMS software allows for tailored reports, user-defined alerts, and, charting, graphing and mapping. The templates and report formats will be programmed for compliance parameters at the Barstow WWTP. The system will be configured to capture operational, as well as analytical data. Input fields will be designed with the

ability to warn the operator if input error is suspected while entering data. The WIMS will be configured to track compliance milestones and deadlines for monitoring and reporting purposes. The built-in calculations module will perform process calculations and will generate trends and user defined data analysis to use in making certain operational decisions.

12. The Discharger shall provide evidence of installation of the WIMS in the form of a letter from the City to the Lahontan Water Board certifying installation by July 30, 2010. Upon such certification of installation to the Lahontan Water Board, the suspended administrative civil liability penalty amount of \$26,100 shall be dismissed. Failure to provide timely evidence of the installation of the ECA will result in the full amount of the suspended penalty being immediately due and payable to the State Water Board Pollution Cleanup and Abatement Account.

### **Section III: Stipulations**

13. The Parties incorporate Paragraphs 1 through 12 by this reference as if set forth fully herein, Stipulate to the entry of this Order as set forth below, and recommend that the Lahontan Water Board issue this Order to effectuate the settlement.

14. This Stipulation is entered into by the Parties to resolve by consent and without further administrative proceedings alleged violations of the WDRs and CWC as set forth in the NOV and ACL Investigation Letter.

15. The Discharger hereby agrees to pay the administrative civil liability totaling \$143,900 as set forth in Paragraph 9 of Section II above. Further, the Parties agree that \$26,100 of this administrative civil liability shall be suspended pending the completion of the ECA and as set forth in Paragraphs 10, 11 and 12 of Section II above.

16. The Discharger understands that payment in accordance with this Order is not a substitute for compliance with applicable laws.

17. Each Party shall bear all attorneys' fees and other costs arising from the Party's own counsel and investigation in connection with the matters set forth herein.

18. In consideration of the Discharger's compliance with this Order, the Prosecution Team and the Lahontan Water Board hereby covenant not to bring any administrative or judicial enforcement actions against the Discharger for the violations alleged in the June 16, 2009 NOV and ACL Investigation Letter.

19. In settling this matter, the Discharger does not admit to any violation(s) of the CWC, or any other federal, state, or local law or ordinance, provided, the Discharger agrees that in the event of any future enforcement actions by the Lahontan Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

20. The Discharger understands that this Order will be noticed for a public review period prior to consideration by the Lahontan Water Board at a public hearing regarding the Order. In the event of comments, or objections, raised during the public comment period for the Order, or raised during the hearing to consider adoption of the Order, the Lahontan Water Board or the Executive Officer may, under certain circumstances, ask the Parties to respond to those objections and comments during the public hearing regarding the Order.

21. The Parties agree that the procedure contemplated for adopting the Order by the Lahontan Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

22. This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter. The Parties agree to advocate for, and to support adoption of, this Stipulation and Order.

23. This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Lahontan Water Board.

24. This Stipulation may be executed in counterparts and by facsimile/.pdf signature.

25. In the event that this Order does not take effect because it is not approved by the Lahontan Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties agree to meet and confer, and to proceed as is necessary or advisable under the circumstances. The Parties acknowledge that under such circumstances, they may need to proceed to an evidentiary hearing before the Lahontan Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations in this matter; or

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review, but only to the extent this period has been extended by these settlement proceedings.

26. The Discharger hereby waives its right to petition the Lahontan Water Board's adoption of the Order in the form attached hereto, for review by the State Water Board, and further waives its rights, if any, to appeal the adoption of this Order to a California Superior Court and/or any California appellate level court.

27. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to settlement of this matter.

28. The Parties hereto have caused this Stipulation to be executed by their respective officers who have the authority to execute the Stipulation on behalf of their respective parties on the dates set forth, and the Stipulation is effective as of the most recent date signed.

29. This Stipulation is effective and binding on the Parties upon the execution of this Order.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Lahontan Region Prosecution Team

By: \_\_\_\_\_  
Chuck Curtis  
Supervising Water Resource Control Engineer

Date: \_\_\_\_\_

City of Barstow

By: \_\_\_\_\_  
Richard D. Rowe, City Manager

Date: \_\_\_\_\_

#### **Section IV: Findings of the Regional Water Board**

30. The Lahontan Water Board incorporates Paragraphs 1 through 29 by this reference as if set forth fully herein.

31. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the matter, the Discharger hereby agrees to comply with the terms and conditions of this Order.

32. The Lahontan Water Board finds that the Recitals set forth in herein in Section I are true.

33. In accepting this settlement, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in CWC section 13327. The Lahontan's Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board Prosecution Team in investigating the matter, including information provided to the Lahontan Water Board Prosecution Team by the Discharger, or otherwise provided to the Lahontan Water Board.

34. This is an action to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

35. The Parties agree that upon execution by the Executive Officer, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order and with respect to the ACL Investigation Letter and NOV, both dated June 16, 2009, or which could have been asserted by the Lahontan Water Board Prosecution Team based on the facts alleged in this Order, the ACL Investigation Letter and the NOV, as of the effective date of this Order.

36. Upon the effective date of this Order, the Parties shall and do release, discharge and covenant not to sue or pursue any civil or administrative claims against one another, including the Parties' officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Lahontan Regional Water Quality Control Board.

\_\_\_\_\_  
Harold J. Singer  
Executive Officer

Date: \_\_\_\_\_

Attachments:

Exhibit A – Notice of Violation dated June 16, 2009

Exhibit B – Administrative Civil Liability Investigation Letter dated June 16, 2009